IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

Crl.MC.No. 735 of 2007()

STC.1863/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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PETITIONER: ACCUSED

ADV. ANIT JOSEPH,
C/O. ADVOCATE MADHAVAN NAMBIAR,
LAND MARK CENTRE, NEAR NEW BUS STAND,
KASARGOD.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: COMPLAINANT & STATE

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1. SRI. N.RAMACHANDRAN, S/O. KUNHIRAMAN,
STATIONARY SHOP, PILATHANAM, PILATHARA P.O.,
KANNUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 735 OF 2007

Dated this the 22nd day of March, 2007

ORDER

The petitioner – a woman and an Advocate, faced indictment in a prosecution under Sec.138 of the N.I. Act. When the case came up for hearing on 17/4/06, the complainant allegedly sought permission under Sec.257 of the Cr.P.C. to withdraw the prosecution and the said prayer was allowed by the court as per Annexure-A order.

2. The complainant later filed Annexure-B application dated 23/5/06. In that, he complained that he was not a party to the application for withdrawal at all. With his knowledge and consent, no such application had been filed at all. According to him, on 17/4/06 at about 10 a.m. four persons had gone to his office and had compelled him under threat and duress to subscribe the signature to certain papers. According to him, such papers which were got signed from him were used fraudulently to facilitate Annexure-A order. He had not intended to withdraw the complaint; nor had he

filed any such application for withdrawal. According to him, his counsel had not appeared before the learned Magistrate on that day and the application for withdrawal was not presented by his counsel. On receipt of Annexure-B petition, the learned Magistrate has issued notice to the petitioner. She entered appearance before the learned Magistrate and filed Annexure-C counter statement. The learned Magistrate is seized of the matter. The petitioner has rushed to this Court to quash the entire proceedings initiated after Annexure-A order was passed.

3. The learned counsel for the petitioner submits that Annexure-A order having been passed, it can be challenged only in an appeal against acquittal in accordance with law. The learned Magistrate has become functus officio and he has no jurisdiction to deal with the matter after Annexure-A order was passed. In these circumstances, all proceedings initiated on the basis of Annexure-B, after disposal of the case under Annexure-A order, may be quashed invoking the powers under Sec.482 of the Cr.P.C. This, in short, is the prayer of the learned counsel for the petitioner.

4. I shall carefully avoid any expression of opinion on merits, lest, it should prejudice the interests of any of the

contestants. But I am of opinion that if the allegations raised in Annexure-B were true, it reveals the presentation of an application for withdrawal without the consent and knowledge of the complainant and passing of Annexure-A order on the strength of such application for withdrawal. It is trite that the fraud vitiates the most solemn of transactions and if the court has been fraudulently led to believe that the complainant has withdrawn the case, whereas he had not really intended to withdraw and had not withdrawn the case, certainly that is an aspect on the court has to seriously consider. I do not intend to express any opinion on the acceptability of the allegation or about the probable orders which the court can pass. Suffice it to say that I find absolutely nothing wrong in the court considering the grievance that the court has fraudulently been led to believe that the complainant had withdrawn the case while he had not so withdrawn the complaint and in considering that question brought to its notice by the complainant under Annexure-B. Whether the order so passed can in law be recalled as vitiated by fraud will certainly have to be considered on merits.

5. I find no merit in the prayer of the petitioner who has

already appeared before the learned Magistrate and filed Annexure-C counter statement that the learned Magistrate should not proceed further with the enquiry. I do not also find any merit in the contention that no specific provision of law is cited by the respondent/complainant in Annexure-B petition. I find no specific provision in the Code under which the fraud perpetrated on the court can be undone.

6. This Crl.M.C. is, in these circumstances, dismissed. I make it clear that the dismissal of this Crl.M.C. will not fetter the rights of the petitioner to raise all relevant and appropriate contentions before the learned Magistrate including the contention that such a petition like Annexure-B is not maintainable in law at all.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge